IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRA/113 / 2006

Shakil Ali Miya Diwan & ors . ... Applicants
vs.
Ibrahim Shaikhu Faaakir Mujawar & ors. . ... Respondents

Ms. Gauri Godse for applicants
Mr. C. M. Lokesh for respondent no2. 3 & 4.
Ms. Madhubala P. Shetty for respondent no.1.

CORAM: D. G. KARNIK **J.**

DATE: 5th December, 2006

P.C.:

1. Heard learned counsel for the parties.
2. This revision application is directed against the order passed by the Civil Judge, Senior Division, Panvel rejecting the application of the appellants for rejection of the plaint under Order 7 Rule 11 of the Civil Procedure Code.
3. The respondent filed a suit against the appellants for perpetual injunction restraining them from taking forcible possession and / or erecting any structures or carrying out any construction activities on the suit property and for other ancillary reliefs. In the suit the appellants filed an application under Order 7 Rule 11 of the Civil Procedure Code for

rejection of the plaint alleging that the permission of the Charity Commissioner under sections 50 and 51 of the Bombay Public Trusts Act, was not obtained prior to the filing of the suit and therefore the suit was not maintainable. Undoubtedly there are some averments in the plaint indicative of a trust, for example in para 8 it is alleged that the appellants are misusing and misappropriating the immovable property of the trust posing themselves as trustees of the trust. However, the plaint must be read as a whole and not in isolation, as contended by the counsel for the appellants. In para 10 of the plaint the respondents have specifically averred that they are in possession, use, occupation and cultivation of the land and they have a right and / or interest in the suit property as owners. They have not claimed the suit property as trustees of the suit property. Read as a whole it cannot be said that the respondents have averred that the suit property belonged to the trust and that they were filing the suit for protecting the property of the trust. They appear to claim the suit property aas owners and not as trustees. In the circumstances it cannot be said, atleast at this stage, that the suit is not maintainable. While considering the application under Order section 7 Rule 11 of the CPC., the averments made in the plaint must be the sole basis to see whether the plait is liable to be rejected. If ultimately the defendants prove at the trial, that the suit

property belongs to the trust, then the court may pass appropriate orders taking into consideration the finding of the fact reached after the hearing. At this stage it cannot be said that the plaint is liable to be rejected at the threshold.

4. There is no merit in the revision application which is hereby dismissed.

(D.G. KARNIK J.)